

## REMARKS

This Amendment is submitted in response to the final Office Action mailed on August 18, 2009. A petition for a one month extension of time is submitted herewith. The Director is authorized to charge \$130.00 for the one month extension of time and any additional fees that may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 3712036-717 on the account statement.

Claims 1-24 are pending in this application. In the Office Action, Claims 1-24 are rejected under 35 U.S.C. §112; Claims 1-2, 4-5, 7, 13-14 and 22-24 are rejected under 35 U.S.C. §102; and Claims 3, 6, 8-12 and 15-18 are rejected under 35 U.S.C. §103. In response, Claims 1, 4 and 7 have been amended, and Claims 22-24 have been canceled without prejudice or disclaimer. In view of the amendments and/or for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

### **35 U.S.C. §112 Rejection**

In the Office Action, Claims 1-24 are rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement. Specifically, the Patent Office asserts that the phrase "wherein the mixture is in liquid form at a temperature of 8 °C" is not supported in the originally filed specification. In response, Applicants have amended independent Claims 1, 4 and 7 to recite, in part, that the mixture has a flowability when measured by a Bostwick Consistometer after 40 seconds of between about 6 cm and about 12 cm at a temperature of 8 °C. The amendments are supported in the specification, for example, at paragraphs 19-22. Based on at least these noted reasons, Applicants believe that Claims 1-24 fully comply with 35 U.S.C. §112, first paragraph.

Accordingly, Applicants respectfully request that the rejection of Claims 1-24 under 35 U.S.C. §112, first paragraph, be withdrawn.

### **35 U.S.C. §102(b) Rejection**

In the Office Action, Claims 1-2, 4-5, 7, 13-14 and 22-24 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Publication No. 2003/0003213 A1 to Drantch et al.

(“*Drantch*”). Applicants respectfully traverse the rejection for at least the reasons set forth below.

Amended independent Claims 1, 4 and 7 recite, in part, a mixture having a flowability when measured by a Bostwick Consistometer after 40 seconds of between about 6 cm and about 12 cm at a temperature of 8 °C. Independent Claims 1, 4 and 7 have also been amended to recite, in part, that the mixture has water in an amount ranging from about 20% to about 40% by weight. The amendments are supported in the specification, for example, at paragraph 34. In contrast, Applicants respectfully submit that the cited reference fails to disclose or suggest a number of elements of independent Claims 1, 4 and 7.

Chocolate fondant cakes are characterized by their crisp pastry exterior and fluid, runny or fondant melted chocolate interior. Such cakes are laborious to prepare because they involve melting chocolate and fat, two mixing steps, and the use of many kitchen accessories. Conventional ready-to-cook mixtures have been developed to help reduce the preparation time of such cakes. However, conventional ready-to-cook mixtures transform into compact blocks that are very difficult or impossible to pour once they are refrigerated.

An advantage of embodiments of the claimed mixture is that they include a source of fat and can still maintain a liquid form at a temperature of 8 °C. This allows the simple preparation, for example, of a fondant cake by pouring the refrigerated mixture into a mold and cooking in a standard oven.

*Drantch* fails to disclose or suggest a mixture having a flowability when measured by a Bostwick Consistometer after 40 seconds of between about 6 cm and about 12 cm at a temperature of 8 °C as required by independent Claims 1, 4 and 7. *Drantch* also fails to disclose or suggest a mixture having water in an amount ranging from about 20% to about 40% by weight as required by independent Claims 1, 4 and 7. In fact, *Drantch* teaches that the doughs of his invention have a total moisture content of about 5 to 15% by weight. See *Drantch*, paragraph 58.

The Patent Office asserts that *Drantch* discloses a dough or batter mixture which is fluid. See Office Action, page 3, paragraph 3. However, the portion of *Drantch* relied on by the Patent Office merely discloses that a “batter” is generally thin enough to pour. See *Drantch*, paragraph 31, lines 7-9. Although *Drantch* discloses that various “batters” are suitable for use in its invention, nowhere does *Drantch* disclose that its dough or batter has a flowability when

measured by a Bostwick Consistometer after 40 seconds of between about 6 cm and about 12 cm at a temperature of 8 °C. See *Drantch*, paragraph 40, lines 7-11.

*Drantch* discloses a dough that is stored at ambient temperatures such as room temperature (25 °C) and higher, rather than refrigeration temperatures such as 8 °C. See *Drantch*, paragraph 20, lines 1-6; paragraph 43. The dough of *Drantch* is specifically meant to address the problems of “chip bleeding” during storage at ambient temperatures as high as 85 °F (29.4 °C). See *Drantch*, paragraph 20, lines 1-6. *Drantch* specifically states that the softening or melting of the chocolate chips is a problem “when the dough is not stored at refrigeration temperatures, but at ambient temperatures.” See *Drantch*, paragraph 7. *Drantch* is thus entirely directed to preventing excessive softening or melting of chocolate chips. See *Drantch*, paragraph 20, lines 1-6.

In direct contrast, the present claims are directed a mixture having a substantially higher water content than the dough of *Drantch*. As a result, the ready-to-use formulations of the present claims are distinguishable from the dough of *Drantch*. By providing a mixture that remains in liquid form after refrigeration, the present claims provide a mixture that may be stored for several weeks at a refrigeration temperature and transformed into a fondant cake with a runny interior of chocolate merely by pouring the mixture into a mold and cooking.

For at least the reasons discussed above, *Drantch* fails to disclose or even suggest each and every element of independent Claims 1, 4 and 7, and thus, fails to anticipate Claims 1, 4 and 7, along with the claims that depend from Claims 1, 4 and 7. Accordingly, Applicants respectfully request that the rejection of the pending claims under 35 U.S.C. §102(b) be withdrawn.

### **35 U.S.C. §103(a) Rejection**

In the Office Action, Claims 3, 6, 8-12 and 15-18 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Drantch*. Applicants respectfully submit that the patentability of Claims 1, 4 and 7 as previously discussed renders moot the obviousness rejection of Claims 3, 6, 8-12 and 15-18 that depend from Claims 1, 4 and 7. In this regard, the cited art fails to teach or suggest the elements of Claims 3, 6, 8-12 and 15-18 in combination with the novel elements of Claims 1, 4 and 7.

As discussed previously, *Drantch* fails to disclose or suggest a mixture having a flowability when measured by a Bostwick Consistometer after 40 seconds of between about 6 cm and about 12 cm at a temperature of 8 °C as required by Claims 1, 4 and 7. *Drantch* also fails to disclose or suggest a mixture having water in an amount ranging from about 20% to about 40% by weight as required by independent Claims 1, 4 and 7. In fact, *Drantch* teaches that the doughs of his invention have a total moisture content of about 5 to 15% by weight, which actually teaches away from the present claims.

Accordingly, Applicants respectfully request that the rejection of Claims 3, 6, 8-12 and 15-18 under 35 U.S.C. §103(a) be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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